

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02742-LTB

LEO SIMMONS,

Applicant,

v.

JAMES FALK, Warden, and
JOHN SUTHERS, Attorney General,

Respondents.

ORDER

On April 8, 2013, Applicant, Leo Simmons, submitted a Motion Seeking Relief From Judgment Pursuant to Fed. R. Civ. P. 60(b), ECF No. 22. The Court must construe the Motion liberally because Applicant is proceeding *pro se*. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The Court construes the Motion Seeking Relief as filed in response to the Court's March 18, 2013 Order. The Court allowed Applicant to refile the Motion for Reconsideration once he had sufficient evidence demonstrating that Respondents had not sent a copy of the Preliminary Response to him. Therefore, the Motion Seeking Relief is construed as a Motion for Reconsideration filed pursuant to Fed. R. Civ. P. 59(e). Nonetheless, for the following reasons, the Court once again denies Applicant's request for reconsideration of the dismissal.

In his March 11, 2013 Motion for Reconsideration, Applicant contends that he did not receive a copy of the Preliminary Response filed with the Court on November 21,

2013, although Respondents have filed two certificates of service with the Court, one on November 21, 2012, indicating the Preliminary Response would be mailed on November 23, 2012, and the other on December 21, 2013, indicating a copy of the Preliminary Response was mailed to Applicant on December 21, 2012. Applicant contended there is a prison log for incoming and outgoing mail, and if he had received any mail it would be noted on the log.

After review of Applicant's April 8 Motion for Reconsideration, the Court finds that Applicant still fails to demonstrate some reason why the Court should reconsider and vacate the order to dismiss this action. Applicant contends that he requested a copy of the incoming legal mail log, but he received a copy of the outgoing legal mail log instead. Applicant asks that the Court assist him in obtaining the needed information, but he does not provide any documentation showing that he requested the incoming logs, he informed prison staff that he received the wrong logs, and he then asked for the correct logs. The Court finds no basis for assisting Applicant and for granting Applicant's Motions for Reconsideration. Accordingly, it is

ORDERED that the Motion Seeking Relief From Judgment Pursuant to Fed. R. Civ. P. 60(b), ECF No. 22, is construed as filed pursuant to Fed. R. Civ. P. 59(e) and is denied.

DATED at Denver, Colorado, this 15th day of April, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court